

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2004-0488, State of New Hampshire v. Isaac Mendoza, the court on February 14, 2005, issued the following order:

Following a bench trial based on stipulated facts, the defendant was convicted for possession of more than five ounces of a controlled drug with intent to sell. He argues that because the State's search warrant affidavit was inadequate, the trial court erred in denying his motion to suppress. We affirm.

The defendant argues that because the facts alleged in the search warrant affidavit did not "establish with certainty" that he was connected to the individual who sold drugs to the State's confidential informant, the affidavit failed to establish probable cause and the search warrant violated his State and federal constitutional rights. "Probable cause is established where a person of ordinary caution would justifiably believe that what is sought will be found through the search and will aid in a particular apprehension or conviction." State v. Dowman, 151 N.H. 162, 164 (2004).

Because the trial court made no factual findings in this case, we review the sufficiency of the affidavit de novo. Id. "We pay great deference to the magistrate's determination of probable cause and interpret the evidence submitted in support of a warrant in a common sense manner, giving due consideration to the preference to be accorded warrants." Id.

The affidavit provided a description of the supplier that matched the defendant. While the description of the supplier was limited, the affidavit also stated that the police had observed the defendant arrive at the building, that the investigating officer then received a phone call from the informant advising that the individual who had just entered the seller's apartment was his supplier, and the police then observed the defendant leave the building. The police followed the defendant from the building to his home. Given the totality of the circumstances cited in the affidavit, we conclude that it contained sufficient information to support the magistrate's finding of probable cause.

Affirmed.

NADEAU, DALIANIS and DUGGAN, JJ., concurred.

Eileen Fox
Clerk